

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

LUIS ZULUAGA,

Plaintiff,

v.

WARDEN T.R. SNIEZEK, *et al.*,

Defendants.

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CASE NO. 4:09-CV-1326

OPINION & ORDER
[Resolving Doc. No. [41](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Plaintiff Luis Zuluaga moves this Court, under [Federal Rule of Civil Procedure 59](#), to reconsider its Opinion and Order adopting Magistrate Judge Benita Y. Pearson's unopposed Report and Recommendation and granting summary judgment for Defendant Dominic Quinn. [[Doc. 41](#); [Doc. 40](#).] For the following reasons, this Court **GRANTS** the Plaintiff's motion.

The Plaintiff erroneously construes this Court's Opinion and Order as adopting a prior opinion by the Magistrate Judge, purportedly dated October 16, 2009. The Plaintiff further argues that he did not object to this prior opinion because he viewed that opinion as issuing a favorable ruling. [[Doc. 41 at 3](#).] Alternatively, the Plaintiff says that "it is unclear" whether he received a copy of the Magistrate Judge's October 26, 2010 Report and Recommendation and thus that could not have opposed it. [[Doc. 41 at 1](#).]

In its Opinion and Order, this Court clearly stated that it adopted the Magistrate Judge's

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October 26, 2010 Report and Recommendation, which resolved Defendant Quinn's motion for summary judgment and the Plaintiff's opposition to summary judgment. The October 26, 2010 Report and Recommendation unambiguously concluded: "Zuluaga did not exhaust administrative remedies before filing the instant action. He has also failed to demonstrate that he is entitled to an exception to the exhaustion requirement. Thus, the undersigned recommends that Defendants' motion for summary judgment be granted." [[Doc. 39 at 9-10.](#)] In adopting the Magistrate Judge's recommendation, this Court referenced no other report and recommendation.

However, the Plaintiff claims that he did not receive Magistrate Judge Pearson's Report and Recommendation. None of the Plaintiff's arguments in his motion for reconsideration challenge the grounds for granting summary judgment; thus, the instant motion cannot be construed as such an objection. Instead, the Court construes Quinn's motion to be a motion under [Federal Rule of Civil Procedure 6\(b\)](#) to extend the time within which he might file objections to Magistrate Judge Pearson's Report and Recommendation. Finding sufficient grounds, the Court **GRANTS** the Plaintiff's motion for an extension of time within which to file objections and grants the Plaintiff leave to file objections to Magistrate Judge Pearson's October 26, 2010 Report and Recommendation. Any such objections must be filed on or before December 21, 2010.

IT IS SO ORDERED.

Dated: November 30, 2010

s/ *James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE